

**MILWAUKIE CITY COUNCIL WORK SESSION
NOVEMBER 16, 2004**

Council President Lancaster called the work session to order at 5:30 p.m. in the City Hall Conference Room.

Present: Councilors Barnes, Loomis and Stone.

Staff Present: City Manager Mike Swanson, City Attorney Gary Firestone, Community Development/Public Works Director Alice Rouyer, Engineering Director Paul Shirey, and Civil Engineer Brenda Schleining.

Measure 37

Mr. Swanson provided the City Council with a draft ordinance that would establish a process for Measure 37 claims. The Measure would go into effect on December 2, 2004.

Mr. Firestone summarized the Measure that allowed people who owned property to submit a claim for compensation if a regulation restricted the use of property and had affected that property's value. The restriction would have to have been adopted some time after either the owner or a family member of the owner acquired the property. The City has three basic options for handling these claims:

1. Pay compensation. Compensation would be based on the difference of the property value at the time the claim was filed with and without the restriction.
2. Waive the regulation or restriction. If the City chose this option, it would allow the owner to build what he/she could have built at the time the current owner acquired the property. Even though the compensation option was based on a regulation that could have been adopted when the current owner's parents or grandparents owned the property, the waiver only addressed the current owner.
3. Deny the claim. The City would have to determine the claim was not legitimate.

The proposed ordinance attempted to provide detail to flesh out some of the missing parts of the Measure but did not add or change the Measure 37 provisions. The proposed ordinance outlined a process for the City to follow as expressly allowed by Measure 37. It did not impose additional obligations on the person making the claim.

The ordinance identified what the applicant had to provide in the written demand for compensation, as Measure 37 was silent on that issue. The proposed ordinance would require that the claim for compensation identify the property, identify the claimant, provide some basic information about when the claimant or family member acquired the property, identify the regulation that allegedly restricted the use of the property, and the amount claimed. This was information Mr. Firestone felt was legitimately needed for something to be considered a demand for compensation. The ordinance further provided a list of things that the claimant was encouraged to include in the written demand for compensation but was not required. These included a fuller description of how the restriction affected the value of the property, a statement describing what waiver was needed, a statement as to whether the claimant preferred compensation or a waiver, a list of all persons with an ownership interest, and an appraisal.

Mr. Firestone described the process once a claim was filed. The claimant or any other person may be involved, as it was a public process. The process required notice, a staff report, and Council decision. There were provisions in Measure 37 that talked about the governing body's making the decision. The Council may decide to change the process a little in the future by having staff or a hearings officer make an initial decision. Again, the three basic options were pay, waive, or deny. It provided some reasons for the claim to be denied and provided some specificity about the waivers. There was a provision that if many people showed up to object, the Council could ask if an affected party was willing to contribute toward the compensation to be paid. There was a provision relating to reimbursement of costs. He advised that the City not charge a fee to submit a claim, as he did not believe it would withstand a court challenge. He believed if the City determined the claim was invalid, it could ask for reimbursement of its costs. He recommended adopting a process before December 2, 2004.

Councilor Stone referred to 1.20.080(I), Council decision. Did that mean if the City did not have the money that it had the option of denying the claim?

Mr. Firestone explained that Measure 37 stated that payment would be made from a fund established for the purpose payment of claims. It also suggested that it could be paid from other funds but did not require it. If the City denied a claim, a claimant could file in circuit court, and at that point the claimant could only seek compensation, not a waiver. If the claimant filed in circuit court and the claim remained unpaid two years after accrual, then the owner could do whatever he/she wanted to do without the challenged restriction. Arguably at that time if the claimant gained the right to develop, then he/she no longer had the right to compensation. One option seemed to be to deny and let things run their course. At the end of that period of time, the developers would have the right to develop as if the questioned regulation were not in place. He would not advise this initially until there was clarification as to whether or not that was how the law would operate.

Councilor Stone understood the City was not obligated to waive if it did not pay.

Mr. Firestone said if the City neither paid nor waived, it would go to circuit court. If the City lost, it was unclear the extent of the obligation to pay any resulting judgment. There were various opinions at this time.

Councilor Barnes asked who paid for the appraisal.

Mr. Firestone said if the City obtained the appraisal, the City would pay for it. The only way he could see the City recovering that cost was if the claim was determined to be invalid.

Councilor Barnes asked if it would be advisable for jurisdictions to go together and have an appraiser on standby for a "group discount."

Mr. Swanson said the City would look at that. If someone asked how many claims the City anticipated or in what amounts, he would honestly have to say he had no idea. He would discuss having someone on standby with other jurisdictions. He suggested looking at the original filing to determine if the amount was reasonable without an appraisal.

Mr. Firestone added there might be cases in which the City decided it did not need an appraisal because staff knew the claim was either very large or very small.

Councilor Barnes asked where the City would find the money to pay those claims.

Mr. Firestone said these funds should probably be budgeted. Some jurisdictions have discussed putting zero dollars in their budgets and not paying.

Mr. Swanson thought it was important to remember that Measure 37 was approved by the voters and was the law. It did not say the jurisdictions did anything wrong. It said the situation would be handled in a different way. He would not propose anything until the budget process, which would give time to determine how things would shake out. If the claims were large, the City could not afford it. The payments would come out of police and library.

Mr. Firestone commented that even though most of the publicity was related to compensation, the proponents saw it as a waiver to allow development.

Councilor Barnes asked if the City Council would have separate meetings to address claims.

Mr. Swanson thought the claims would be part of the regular agenda, but that was dependant upon a volume which was as yet unknown. He believed the

challenge would be the many discussions having to do with use, and those would be difficult at the counters.

Mr. Firestone expected a lot of litigation in that area. The sponsor took the position that any development regulation of any type was a use restriction. The measure referred to restrictions on use, which had a meaning in land use law and were different from development standards. It would require litigation to determine if use restriction meant any restriction in a zoning ordinance or just the ones that restricted residential, commercial, retail, community service use, etc. He commented on the Oregon Attorney General's opinion on Measure 7 that took the position that a development restriction was a use restriction even though in his view there was no basis for it in the law or the measure.

The group agreed to amend the meeting agenda to adopt the ordinance at this session.

Sewer Extension Strategy

This item was postponed to a future work session.

School Speed Zone Report

Ms. Schleining and **Mr. Shirey** provided an update on the new school zone laws that went into effect on July 1, 2004.

Ms. Schleining reviewed Milwaukie school zones and the three applications. She provided a diagram of the Hector Campbell Elementary School area as an example.

Councilor Stone discussed the advance warning school crosswalk sign and understood it was 20 mph at all times because of the crosswalk.

Ms. Schleining reviewed the Home Avenue crosswalk. There was advance warning, then "20 mph when children present", and "school crossing." The legal definition in this legislation for children present was that they were actually in the crosswalk and ready to cross the street. Regulations applied to school crosswalks that were marked and signed. She commented on the faded signs and thought the biggest issue was money for high-grade signs that were about \$80 each, and the street fund was struggling. It would be beneficial to have some long-range goal to get a little money to streets for traffic calming in the vicinity of schools.

Councilor Barnes asked if fine money could be used to buy new signs.

Mr. Swanson said it would probably be better to say signs would be paid for out of the general fund.

Councilor Stone thought it would be a good idea for all of the violation money to go into a big pot to pay for this.

Mr. Swanson said the problem was that court fines were general fund revenue. The problem would be to find cuts in the general fund to do this and would be a matter of prioritization.

Ms. Schleining said the City sign shop made some of the signs for the City but not all. One agency assessed speeders \$10 per citation that went to traffic calming. The signs were really old and speeding was an issue in the City. However, it did not seem to be a money priority. She discussed the signs needed for the City to be legally compliant.

Mr. Firestone added that it was within the City's discretion whether or not to post any of these signs. The restrictions applied only if posted. The City may only double fines in school zones and then only if it was posted.

Councilor Stone commented there was a "fines double" sign at the school crossing on 32nd Avenue.

Council President Lancaster thought the real danger was on busy streets like Railroad Avenue, Linwood Avenue, 32nd Avenue, and Lake Road. He thought it would make more sense to put the signs on the major thoroughfares. He suggested posting a sign that said fines tripled in school zones.

Councilor Stone said Portland was using signs in conjunction with the flashing yellow beacons.

Mr. Firestone said fine amounts were restricted by state statute.

Ms. Schleining discussed the limitations of traffic control devices and the fluorescent or lime green signs by the crosswalks.

Councilor Barnes suggested asking the Public Safety Advisory Committee for a recommendation.

Councilor Stone understood the intent of this senate bill was to make school zones safer areas for children.

Mr. Firestone commented Milwaukie was well ahead of other jurisdictions in compliance and that engineering had done a good job.

Other issues

Councilor Barnes reviewed the recent economic development meeting and recent League of Oregon Cities Conference. The conference was a good chance to meet elected officials from other cities as well as an opportunity to get to know Councilor-elect Colletto. She suggested a representative from Milwaukie attend the Clackamas County Coordinating Committee meeting regarding Measure 37.

Councilor Barnes commented on the recent economic development meeting where the business owners shared a lot of good ideas. Their issue was that the City may be spending too much time listening only to the concerns of the residents and that it was equally important to listen to the concerns of businesses particularly those considering locating in the area. These comments were from the North Industrial area and Bob's Red Mill. Mr. Moore had some specific concerns, and others agreed. The City had an image that needed to be dealt with. The group suggested customer feedback forms for the planning department and that staff wear buttons that said something like, "You can do it – Ask me how." They felt this would offer for a more customer service friendly atmosphere and made the applicant feel empowered. The City needed to explain the competing needs of businesses and residents. These thoughts were expressed at two consecutive meetings.

Councilor-elect Carlotta Collette said that conversation was very much alongside the Measure 37 conversation. It did not happen so much because people wanted money but because they were tired of regulations and being treated like underlings when they went to any government try to realize their dreams. They were met with a list of restrictions they had to fulfill. The suggestion was to start looking at things creatively when applicants came in with their plans and begin by looking at what that person wanted to accomplish. This was the feeling of many and not just in Milwaukie.

Councilor Lancaster found that troubling in that he thought Milwaukie was making great strides in its attitude and presentation. This seemed like a reversal of previous comments.

Councilor Barnes said Mr. Moore made it clear that he had to go to the Mayor in order to get things taken care of, and if it had not been for the Mayor, they would not have been done. The business community should not have to call the Mayor to get things finished, and that was the consensus.

Mr. Swanson said they got it done, and he thought the comment was petty. He was involved in that project and solved the problem along with John Gessner. The problem had to do with a TriMet regulation. It was not a City regulation. He was at Bob's Red Mill two weeks ago, and the builder was there. He said this project would not have happened without the City. Mr. Swanson was often

struck by how he was never on the right side of an issue. He never heard from the happy people. He always heard from those who were upset. If that was how he judged things, then he would be wrong 100% of the time. As far as listening to the people and doing everything according to the people, the City goofed up this summer because staff supported 100% the option on the transit center. One of the reasons staff supported it was to protect the viability of the North Industrial Area. If the philosophy was to only listen to the people, staff goofed because a lot of those people will not talk to him anymore.

Council President Lancaster said the City had an entirely separate group convene over the transit center specifically addressing the concerns of the North Industrial folks. If they were making those kinds of concerned comments now, that was a problem.

Councilor Barnes clarified they said that was what had happened up until the transit center. They did not feel as if they were recognized.

Ms. Collette further clarified that Mr. Moore said he was here because he knew he could go to the Mayor and get something accomplished. He loved Milwaukie because of that, and it needed to be communicated that the City was a small enough town that businesses had access to the Mayor if there were problems. Ideally, that would happen at the staff level with their looking for creative ways to adapt the visions to the requirements.

Council President Lancaster said the original comment led him to believe one had to go to the Mayor to get the rules bent, and that was patently wrong.

Council President Lancaster adjourned the work session at 6:25 p.m.

Pat DuVal

Pat DuVal, City Recorder

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